IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3358 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAMPA PURIE CHEM INDUSTRIES - Petitioner(s)
Versus
VADODARA MUNICIPAL COMMISSION-ER - Respondent(s)

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Appearance :
MR DN PANDYA for Petitioner(s) : 1,
MR PRANAV G DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 30/03/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Commissioner, Vadodara Municipal

Corporation dated 4.2.2000 communicated by letter dated 10th February 2000 by which the petitioner is informed that the permission for exemption or concession in octroi granted earlier under Rule 28(11) of Octroi Rules has been revoked.

2. The petitioner is having Chemical Industries at GIDC, Makarpura, Vadodara. The petitioner approached the Vadodara Municipal Corporation for getting the benefit of Octroi Rules, more particularly Rule 28 of the said Rules for exemption or concession in octroi contending inter alia that the petitioner is doing job work; that the petitioner was granted exemption/concession considering that the chemical process is a job work as per Rule 28(11) of the Rules; and accordingly benefit was given. It appears from the record that the Commissioner was of the opinion on verification of the facts that the chemical process carried out by the petitioner is not a job work as the entire product is changed and Crude Mercury/Iodine is produced which is a new product; therefore the said chemical process cannot be said to be a job work as envisaged under Rule

28(11) of the Octroi Rules; and therefore vide impugned communication/order dated 3.4.2000 the Municipal Commissioner, Vadodara Municipal Corporation holding that the chemical process cannot be said to be a job work as envisaged under Rule 28(11) of the Octroi Rules as by the aforesaid process a new product is produced, rejected the prayer of the petitioner for exemption or concession.

3. Being aggrieved and dissatisfied with the aforesaid order/communication dated 3.4.2000, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. Shri DN Pandya, learned advocate appearing on behalf of the petitioner has vehemently submitted that the chemical process is a job work and has tried to argue on merits that the impugned order is bad in law and by no stretch of imagination it cannot be said to be a new product. He has further submitted that even the impugned communication/order is passed

without giving any opportunity and the same is in breach of principles of natural justice.

5. It is required to be noted that by interim direction dated 30th October 2001, learned Single Judge of this Court, during pendency of the present proceedings, relegated the petitioner to make a representation to the Municipal Commissioner, Vadodara Municipal Corporation, was directed to consider the same on its own merits. It is reported that the petitioner did make a representation subsequently and the Deputy Commissioner also communicated the outcome of the same. On going through the same, it appears that no decision has been taken on merits although reasons have been assigned rejecting the representation and/or to continue the earlier order. It is apparent from the order that the Commissioner has stated that as the matter is pending before the High Court he has not taken any decision. It is required to be noted that as such the Commissioner was required to decide the same on merits, however he has chosen not to do it.

Be that as it may, the fact remains that the earlier order impugned was passed without giving opportunity to the petitioner and the same is in principles of natural justice. It is also required to be noted that the controversy in question is technical one and the questions whether the chemical process which the petitioner contends to be a job work is really a job work or on the contrary a new product is manufactured or not are all disputed questions of facts which cannot be determined by this Court in exercise of powers under Article 226 of the Constitution of India. However, as stated above, the impugned order/decision is in breach of principles of natural justice as no opportunity was given to the petitioner before rejecting the claim of the petitioner/withdrawing the exemption/concession given in his favour. If reasonable opportunity would have been given in that case the petitioner might have pointed out and/or established that the chemical process by the petitioner is a job work and by such process any new product is not produced.

6. Under the circumstances, the matter requires to be remanded to the Commissioner, Municipal Corporation of Vadodara for passing appropriate order in accordance with law and on merits after giving opportunity to the petitioner. At this stage, Shri Pandya, learned advocate appearing on behalf of the petitioner has submitted that in that case the present petition itself may be ordered to be treated as a representation with a further order to afford personal hearing to the petitioner to satisfy the Municipal Commissioner with regard to the controversy in question, to which Shri Pranav G. Desai, learned advocate appearing for the respondent Corporation has no objection.

7. For the reasons stated hereinabove, the petition succeeds in part. The impugned order/communication dated 4.2.2000/10.2.2000 are hereby quashed and set aside. The matter is remanded to the Commissioner of Vadodara Municipal Corporation to consider the case of the petitioner by treating the present petition itself as a representation and

for passing an appropriate and speaking order in accordance with law and on merits after giving personal hearing to the petitioner. It is understood between the parties that by quashing and setting aside the impugned order/decision and while remanding the matter to the Commissioner, Municipal Corporation, the petitioner shall not be given the benefit which was prevailing prior to the impugned order/communication by virtue of the reason that since during the pendency of the present Special Civil Application there is no interim relief granted by this Court, the order/decision impugned in the present petition is in operation till final disposal. However, if any order is passed in favour of the petitioner after giving opportunity to him, then certainly the petitioner will be entitled to all other consequential benefits. The aforesaid exercise be done by the Commissioner of Vadodara Municipal Corporation within the period of three months from the date of receipt of this order for passing a speaking and reasoned order. Rule is made absolute to the aforesaid extent, however, with no order as to

costs.

[M.R. Shah, J.]

RMR.